



WISCONSIN REGULATORY DIGEST

A Publication of the
DEPARTMENT OF REGULATION AND LICENSING

Volume 10, No. 2 **FOR REAL ESTATE LICENSEES** **November, 1997**

A Message From the Chair by James R. Imhoff, Jr.

Buyer Agency

Over the past few years there have been a number of complaints filed with the Department concerning activities of both buyer's agents in their treatment of sellers and seller's agents, and traditional seller's agents in their treatment of buyer's agents and their clients. It appears that, with all of the education that has occurred and is occurring, many licensees have not come to understand and accept the concept.

For this reason we are establishing a task force on buyer agency that will begin meeting this fall. The goal of this group is not to change any laws, but to review and establish standards of practice for which the investigative and enforcement division may judge the conduct of both, the buyer's agent and the traditional seller's agent in the transaction.

Wisconsin law (with regard to real estate agency) is not like that of other states in that it allows only **limited** agency that cannot be adversarial for or against the buyer or seller. Our laws require us to "treat all parties fairly."

The Board is concerned about a number of issues:

- Buyer's agents who become adversarial to the detriment of the seller and, probably, their principal, the buyer.
- Seller's agents who as the listing agent refuse to cooperate with the buyer's agent, thus becoming a detriment to the buyer and, probably, to their principal, the seller.

All licensees must understand that the issue of agency is here to stay. It is not going away. Lines 33 and 34 in the Listing Contract (WB-4) are very clear: "The parties agree that Broker will work and cooperate with other brokers in marketing the Property, including brokers from other firms acting as subagents (agents of seller retained by broker) and brokers representing buyers,..." (Continued on Page 2)

THE WISCONSIN REAL ESTATE BOARD

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Message from the Chair (Continued)

The day of the listing broker controlling the transaction 100% is gone. Today, it is evident that the buyer has the same rights to representation as the seller. This includes determining with the buyer's broker the fee amount and how the fee is to be paid.

Yes, it is the buyer who has the right to determine how the buyer's broker fee is paid, not the listing broker.

While the listing broker may offer a co-brokerage fee the buyer may direct the buyer's agent to reject that fee and then direct the buyer's agent to draft the offer, asking the seller to pay the fee at closing.

In some cases, the listing agent recommends to the seller to counter out the fee. This advice in some situations may put the transaction in jeopardy and then the question may arise, "Did the listing agent truly represent his or her principal, the seller or was the listing agent simply representing his or her own self interest?"

I have even heard of some listing brokers attempting to dictate to buyer's agents just how the offer should be written, including terms.

We also have problems with buyer's agents who don't totally understand their limited agency. Some have attended national training programs accumulating certain legal language and process for contracts that when used in Wisconsin may be detrimental to the seller and thus violate the "treat all parties fairly" aspect of our laws.

All of these issues will be discussed by the task force. If you have any suggestions, drop me a note.

Remember, in many areas of the state, buyer's agents and listing agents are now cooperating extremely well. There are no dictates by one to the other. It's simply a case of licensees working very hard for both the buyer and seller with one goal in mind---a happy and successful closing.

Biennial Budget Bill - This bill revised the original and renewal license fees, as explained elsewhere in the Regulatory Digest. It also changed the real estate education statutes, by removing the words "classroom education" and removing the number of hours, so that the administrative rules may dictate the number of hours and establish policies which will facilitate "distance learning" (i.e. education by CD-ROM, videotape and on the Internet.)

1997 Assembly Bill 334 - This bill would establish requirements for the registration of home inspectors with the Department of Regulation and Licensing. It includes an examination requirement, authority for the Department to promulgate administrative rules and to take disciplinary action, and provisions relating to the liability of a home inspector for negligence. The Real Estate Board supports this bill. A public hearing relating to this bill was held on October 14, 1997.

1997 Assembly Bill 321 - This bill requires that the Department of Agriculture, Trade and Consumer Protection promulgate rules that a home inspector must follow in conducting a home inspection. This bill does not require licensing or registration with any state agency. A public hearing was held on this bill October 16, 1997.

PRACTICE ISSUES

Relocation Company Transactions

The October, 1985, issue of the Regulatory Digest contained an article about potential problems relating to how certain relocation transactions were being handled. It appears that the questionable practices have remained pretty much unchanged since then. This situation has motivated the Wisconsin Realtors Association to bring together realtors and real estate attorneys to examine the practices and recommend alternative procedures. A position paper prepared by the Wisconsin Realtors Association identified the following issues and commented on them at greater length than what we have room for in the Regulatory Digest:

1. Relocation companies ordinarily do not take title to the real estate being purchased.

LEGISLATION

2. Relocation companies often assert that “verbal” acceptance has occurred prior to the time the buyer’s offer has actually been signed.
3. Relocation companies may ask licensees to obtain buyer’s signatures on an addendum to the offer, after the buyer’s offer has been accepted by the original owner or the relocation company.
4. Relocation companies often refuse to honor current or prior listing contracts signed by the owner and the rights arising thereunder.
5. Relocation companies often ask licensees to “fill-in-the-blanks” on a preprinted form provided by the relocation company.

Look for more information in the next Regulatory Digest about the impact of certain practices on potential disciplinary actions.

Reciprocity of Licensure

For quite a number of years Wisconsin has accepted some of the education received by persons licensed in other states and Wisconsin has exempted licensees of other state from taking the national portion of the salesperson’s examination. Wisconsin’s administrative rules relating to pre-license education were recently changed and persons licensed in another state who wish to receive a salesperson’s license in Wisconsin must obtain the usual 72 hours of education, but only 13 of the 72 hours must be obtained at a Wisconsin-approved school; broker applicants must obtain an additional 36 hours of education, but only 3 hours must be obtained at a Wisconsin-approved school. Broker applicants must pass the complete 100-question broker’s examination.

We anticipate signing reciprocal agreements with Illinois and Minnesota by the time you read this article. The agreements would enable the other states to amend their requirements for Wisconsin licensees who are seeking a license in the other state.

Licensing and Examination Fees

After the Budget Bill becomes effective, the fees will be as follows:

Original License - \$41

Renewal Fees

Individual Broker - \$125

Business Entity - \$71

Salesperson - \$73

Time-Share Salesperson - \$61

Exam Fees

Salesperson’s National and State - \$79

Salesperson’s National Only - \$69

Salesperson’s State Only - \$59

Broker’s - \$79

Test-out Exam - \$49

Number of Licensees

Individual Brokers - 15,311

Business Entities - 1,900

Salespersons - 9,925

Time-Share Salesperson - 164

Farewell to Two Auditors

Jeanne Pegelow and Ralph Llamas have audited real estate trust accounts for several years. They have transferred to other state agencies to cut down on some of the travel. We’ll miss them; they did good work. Brokers may be meeting some new auditors soon. Todd Liebergen is already on board.

Unlicensed Personal Assistants

The use of unlicensed personal assistants has raised a number of questions about the types of activities which the unlicensed assistants may perform and the role of the broker who owns and operates the business. Broker-employers have expressed a need to be involved in establishing the conditions of employment between their salespersons or broker-employees and the unlicensed personal assistants, because, ultimately, the broker-employer can be held legally responsible for the acts of all of these people. Another significant issue relates to whether unlicensed personal assistants may assist at open houses without being accompanied by a real estate licensee. The decision turns on whether personal assistants working alone at open houses can avoid negotiating with prospective buyers and whether for all practical purposes, they can’t avoid negotiating with some people.

The Department prepared proposed administrative rules to address these issues. A hearing was conducted on August 28, 1997. It is possible that new rules may come out of this process. Stay tuned for more information.

All licensees, except those who were issued their first Wisconsin real estate license after January 1, 1997, must satisfy the continuing education requirement during 1997-98 in order to renew their license in a timely manner in the fall of 1998. The license renewal deadline is December 31, 1998. Licensees may complete the 1997-98 continuing education after that date; however, their license may not be renewed until they complete the education and pay a late renewal fee of \$25 and they may not engage in the practice of real estate after that date.

There are two basic alternatives for completing the requirement:

ALTERNATIVE #1: Continuing Education Courses Approved by the Department

Attend 4 courses of at least 3 hours in length at a school approved by the Department. The 4th Course ONLY has options which relate to specific areas of practice. **All courses must be approved by the Department before a school may grant a certificate of attendance to a licensee.**

- | | |
|-----------|--|
| Course 1 | Listing Issues (Everyone must take.) |
| Course 2 | Offer to Purchase and Other Sales Contracts (Everyone must take.) |
| Course 3 | New Developments (Everyone must take.) |
| Course 4A | General Real Estate Practice Elective (Everyone must take this elective OR one of the other 4 electives.) |
| Course 4B | Broker-Manager Elective (Everyone must take this elective OR one of the other 4 electives.) |
| Course 4C | Commercial Elective (Everyone must take this elective OR any of the other 4 electives.) |
| Course 4D | Property Management Elective (Everyone must take this elective OR one of the other 4 electives.) |
| Course 4E | Rural/Farm/Vacant Land Elective (Everyone must take this elective OR one of the other 4 electives.) |

ALTERNATIVE #2: Continuing Education Test-Out Exam

This alternative will be available from July 1, 1997, until June 30, 1998. The cost of the exam will be \$49.

A study guide will be available later from the Wisconsin Realtors Association.

New Telephone System

The Division of Business Licensure & Regulation has installed a new menu telephone system which is

designed to more efficiently direct the caller to the appropriate section. It has had some "bugs" and we apologize for that; however, we will keep fine-

tuning it so that you will receive good service. The new telephone number for licensing staff is:

(608) 266-5511

After dialing this number you are asked to press 1, 2, 3 or 4, followed by sub-menu numbers. For all practical purposes, these menu numbers and sub-menu numbers can be treated like extension numbers

if you know the extension of the person you are calling. For the following requests, please press numbers as noted:

Applications Processing	Ext. 43
Education	Ext. 21
Transfer of Employment	Ext. 22
Name/Address Changes	Ext. 21
Trade Names	Ext. 22
Practice Questions	Ext. 32
Complaint Forms	Ext. 12

DISCIPLINARY ACTIONS

DAVID K. STARK, STARK REAL ESTATE COMPANY (MADISON, WI) **REPRIMANDED**
Failed to determine that salesperson was properly licensed. (See, Kramer). Also ordered to pay costs of \$100. Effective 12/12/96.

SCOTT W. KRAMER (MADISON, WI) **REPRIMANDED**
Practiced without current real estate salesperson's license. Also ordered to pay a forfeiture of \$100 and costs of \$100. Effective 2/27/97.

JEFFREY D. METZER (HOLLANDALE, WI) **LIMITED**
Convicted of possession with intent to deliver marijuana. Ordered to participate in a program of random drug screening and to provide quarterly reports from supervising broker evaluating his work performance. Effective 2/27/97.

DAWN R. HUPFER (PRESQUE ISLE, WI) **LIMITED**
Convicted of making false statement on a Federal Income Tax Return. Ordered to take 8 hours of real estate related education and to pay costs of \$200 within 6 months. Effective 2/27/97. Failed to take education or pay costs by due date, and therefore subsequently suspended until such time as the education is completed and costs paid. Effective 9/25/97.

GREGORY J. REAMER (GREENFIELD, WI) **SUSPENDED**
Violated board order. Failed to obtain the real estate education previously ordered on 9/26/96. Suspended until the conditions of the prior order have been satisfied. Effective 2/27/97.

DAVE K. KUSCHMAN (LA VALLE, WI) **LIMITED**
Negotiated a real estate transaction directly with the seller without the permission of the listing broker. Reprimanded and ordered to take 9 hours of real estate related education. Also ordered to pay costs of \$400. Effective 2/27/97.

KESSLER REALTY, INC. (REEDSBURG, WI) **REPRIMANDED**
Failed to timely transfer earnest money to the listing broker. Effective 2/27/97.

ROBERT E. KESSLER (REEDSBURG, WI) **LIMITED**
Failed to properly supervise employee (see, Kuschman). Reprimanded and ordered to take 9 hours of real estate related education. Effective 2/27/97.

JOAN M. MCINTYRE (GREENVILLE, WI) **LIMITED**
Improper disbursement of trust funds; failed to maintain trust account records in manner required by law; failed to timely withdraw commissions from trust account; and failed to retain trust account records for at least three years. Ordered to limit sales activities to that of a salesperson under supervision of licensed broker-employer, to provide quarterly reports from supervising broker evaluating her work performance, and to take 18 hours of real estate related education. Also ordered to pay costs of \$1,000. Effective 3/27/97.

SONJA DAHLE (LA CRESCENT, MN) **LIMITED**
Refused to draft and promptly submit an offer to purchase. Reprimanded and ordered to take 7 hours of real estate related education. Also ordered to pay costs of \$300. Effective 4/24/97.

HARLAN W. HEIN, JR. (ONALASKA, WI) **LIMITED**
Failed to properly supervise employee (see, Dahle). Reprimanded and ordered to take 4 hours of real estate related education. Effective 4/24/97.

GERALD R. RITSCH (EAU CLAIRE, WI) **LIMITED**
Audit revealed trust account violations regarding the ledger, trial balances, validation, commingling, improper disbursement and adequate funds. Reprimanded and ordered to take 5 hours of real estate related education. Also ordered to pay a forfeiture of \$100 and costs of \$250. Effective 5/22/97.

RICHARD W. GEIS, JR. (MILWAUKEE, WI) **LIMITED**
Audit revealed trust account violations regarding the journal, ledger and trial balances; and violations respecting failure to place agreements in writing and agency disclosure forms. Reprimanded and ordered to take 8 hours of real estate related education. Also ordered to pay a forfeiture of \$100 and costs of \$200. Effective 5/22/97.

LEE A. SATHER (JANESVILLE, WI) **LIMITED**
Failed to deposit moneys within 10 days of notification of bank service charge; failed to maintain accurate journal balance; failed to perform monthly bank reconciliations; failed to perform monthly trial balances; and failed to monthly validate the account balance. Reprimanded and ordered to take 5 hours of real estate related education. Also ordered to pay a forfeiture of \$500 and costs of \$300. Effective 5/22/97.

TOM A. SIMONSON (CASHTON, WI) **LIMITED**
Audit revealed trust account violations regarding the journal, account reconciliation, trial balances, validation and deposits. Reprimanded and ordered to take 5 hours of real estate related education. Also ordered to pay a forfeiture of \$100 and costs of \$200. Effective 5/22/97.

ALLEN D. TAINTER (EAU CLAIRE, WI) **LIMITED**
Audit revealed trust account violations regarding the ledger, trial balances, validation, commingling, improper disbursement and adequate funds. Reprimanded and ordered to take 5 hours of real estate related education. Also ordered to pay a forfeiture of \$100 and costs of \$250. Effective 5/22/97.

MARY E. SCHAEFER (NEW BERLIN, WI) **LIMITED**
Signed seller's name to listing contract. Reprimanded and ordered to take 9 hours of real estate related education. Also ordered to pay costs of \$300. Effective 5/22/97.

(Continued on Page 6)

Department of Regulation and Licensing
Real Estate
P.O. Box 8935
Madison, WI 53708-8935

REGULATORY DIGEST

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DEAN A. BARKER (WAUTOMA, WI)

LIMITED

Failed to ensure that contingency requirements were being met within the specified timeframe of a contract. Reprimanded and ordered to take 4 hours of real estate related education. Also ordered to pay costs of \$300. Effective 6/26/97.

ELIZABETH K. HAGIST (MINOCQUA, WI)

LIMITED

Failed to transfer earnest money to listing broker within 30 days after receipt; failed to include check numbers and daily running balance in the journal; failed to include buyer and seller names on ledger pages; failed to account for broker's personal funds held in trust account; and failed to perform monthly trial balances and validations. Reprimanded and ordered to complete 5 hours of real estate related education. Effective 6/26/97.

YESCHEK & ASSOCIATES, INC. (MINOCQUA, WI)

REPRIMANDED

Licensee-officer of company violated trust account laws. (See, Hagist). Also ordered to pay a forfeiture of \$1000 and costs of \$600. Effective 6/26/97.

MARK D. HILLER (ST. GERMAIN, WI)

REPRIMANDED

Practiced without current real estate salesperson's license. Also ordered to pay a forfeiture of \$100 and costs of \$100. Effective 6/26/97.

DAVID L. CLARK (ST. GERMAIN, WI)

REPRIMANDED

Failed to determine that salesperson was properly licensed. (See, Hiller). Also ordered to pay costs of \$100. Effective 6/26/97.

CRAIG R. KOSZAREK (MILWAUKEE, WI)

SUSPENDED

Utilized an incompetently drafted listing contract; failed to deliver copy of accepted offer to buyer until closing; failed to inform buyer that offer had not been accepted by deadline; and failed to determine that salesperson was properly licensed. Suspended for at least six months, required to take all educational requirements for original salesperson's and broker's licenses, and upon return to practice required to work under supervision of a broker-employer for one year. Also ordered to pay costs of \$11,380.09. Effective 7/26/97.

BILL B. FRAZER (COTTAGE GROVE, WI)

VOLUNTARY SURRENDER

Incompetently drafted an offer to purchase and failed to provide buyers with agency disclosure form. Effective 8/28/97.

GUY D. TRECROCI (KENOSHA, WI)

LIMITED

Failed to disclose known existence of a storm sewer to buyers of vacant lot. Reprimanded and ordered to take 9 hours of real estate related education. Also ordered to pay costs of \$300. Effective 8/28/97.

ROCHELLE E. MILLER (MADISON, WI)

LIMITED

Provided buyer with duplicate key to property despite specific instructions of the seller to the contrary. Reprimanded and ordered to take 9 hours of real estate related education. Also ordered to pay costs of \$300. Effective 8/28/97.

RESTAINO BUNBURY & ASSOCIATES, INC. (MADISON, WI)

REPRIMANDED

Failed to appropriately supervise employee. (See, Miller). Also ordered to pay costs of \$300. Effective 8/28/97.

CAROL A. WILLIAMS (OSHKOSH, WI)

REPRIMANDED

Failed to determine that salesperson was properly licensed. Also ordered to pay costs of \$100. Effective 8/28/97.

JO ANNE STANIK (WINTER, WI)

VOLUNTARY SURRENDER

Failed to deposit trust funds within 48 hours of receipt, and created shortage in trust account by making numerous improper disbursements. Effective 8/28/97.

MARSHALL ARRIEH (WAUWATOSA, WI)

SUSPENDED

License to practice law suspended for six months for misconduct in the handling of client funds. Suspended for six months. Effective 9/25/97.

KERNON J. BAST (HUDSON, WI)

LIMITED

Entered into a listing contract with owner having an unexpired listing contract on property with another broker. Reprimanded and ordered to take 4 hours of real estate related education. Also ordered to pay costs of \$300. Effective 9/25/97.

BENCO PROPERTIES, LTD. (RICHLAND CENTER, WI)

REPRIMANDED

Licensee-officer of company violated real estate law. (See, Paul J. Breininger). Also ordered to pay forfeiture of \$3,000. Effective 9/25/97.

PAUL J. BREININGER (RICHLAND CENTER, WI)

SUSPENDED

Intentionally concealed true purchase price from buyer's secured lender by failing to disclose side-agreement between buyer and seller; misrepresented condition of septic system; failed to reduce to writing full agreement of parties relating to property inspection; failed to deposit trust funds; and failed to properly supervise conduct of employee (see, Christene M. Breininger). Suspended for 45 days and required to take all educational requirements for original salesperson's and broker's licenses. Also ordered to pay costs of \$1,500. Effective 10/25/97.

CHRISTENE M. BREININGER (RICHLAND CENTER, WI)

LIMITED

Intentionally concealed true purchase price from buyer's secured lender by failing to disclose side-agreement between buyer and seller; misrepresented condition of septic system; and failed to reduce to writing full agreement of parties relating to property inspection. Reprimanded and ordered to take 20 hours of real estate related education. Effective 9/25/97.